

**STATEMENT OF THE HONORABLE MARK ASMUNDSON
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STATE OF WASHINGTON
BEFORE THE U.S. SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION, SUBCOMMITTEE ON SURFACE
TRANSPORTATION AND MERCHANT MARINE
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My thanks to you, Senator Gorton, and to Chairman McCain and other members of the Committee for conducting the field hearing today. I appreciate the opportunity to testify before this Committee. I, and the citizens of Bellingham appreciate the opportunity to discuss the important subject of pipeline safety and to highlight the inadequacies of the current methods of oversight of the safety of the interstate fuel pipeline network in the United States.

In Bellingham, we have experienced, in a dramatic, tragic, and profound way, the failure of the current system of ensuring pipeline safety in America.

As you know, on June 10, 1999, the Olympic pipeline, which passes through Bellingham, ruptured, spilling one quarter of a million gallons of gasoline into a park and creek in the middle of our city. The gasoline vapors ignited and two boys and a young man were killed as a result. The city park was severely impacted and the salmon-bearing stream was effectively sterilized for one and one-half miles of its length. But for the inadvertent ignition by two of the boys, the gasoline would undoubtedly have proceeded into and through downtown Bellingham into Bellingham Bay, the result of which would have been even further devastation to our community.

It goes without saying that the people of Bellingham are concerned about the safety of the Olympic pipeline and the safety of pipelines throughout our country. The Olympic pipeline travels through twenty-one cities in the State of Washington. The combined population of these cities is nearly 800,000 people. A significant portion of this pipeline passes through highly urbanized areas, as well as environmentally sensitive areas including lakes, salmon-bearing streams, aquifers and critical wetland habitats.

In Bellingham, the Olympic pipeline travels through many neighborhoods, near schools, across city parks, and traverses three salmon-bearing streams.

Following the disaster, I began a period of intense involvement in understanding the fuel pipeline industry, the regulatory regime, and the circumstances that could have led up to the kind of event that occurred in Bellingham on June 10, 1999. I discovered that the

Bellingham event was not unique. Based on the history of the pipeline industry and the spills that have occurred over recent years, I have concluded that this event could have been expected.

Given the current state of affairs involving interstate fuel pipelines in America, the issue is not will pipelines leak, but when will they leak, where will the leaks occur, and what kind of harm, great or small, will result from the leak or rupture? Over the course of the last two decades, there is a history of disaster after disaster involving interstate pipelines. Many of these have resulted in serious injuries or death. All of them have resulted in serious environmental damage. (Attachment "A" highlights several significant leaks).

Having looked at the history of pipeline accidents in America and finding that the track record of safety for pipelines is truly alarming, the question I had to ask myself is: Why? How can this continue to happen?

While the ongoing occurrence of accidents such as the one that occurred in Bellingham causes alarm, the answer to the question of why these continue to occur is even more alarming.

The federal government has preempted regulation of pipeline safety. It is clearly within the power and purview of the federal government to do so. The alarming fact is that while the federal government has prevented states and localities from engaging in safety and environmental protection-oriented regulation of pipelines, it has not come remotely close to ensuring that pipelines will be operated in a safe fashion. In fact, in reviewing the many recent comments of Mr. Hall, the chairman of the National Transportation Safety Board, it is apparent that the OPS has consistently failed to take steps reasonably calculated to result in safer pipelines in our communities.

Why is it that the OPS has done a poor job of making pipeline operations safe? In part, it is because of limited resources. It is true that the OPS has not been adequately funded, particularly until the most recent past. However, as a result of my observations and review of the record, I have concluded that the fundamental problem is a lack of will on the part of the OPS. Rather than aggressively and effectively pursuing public safety, the OPS seems intent on ensuring that it takes no action without the agreement and concurrence of the industry it is charged with regulating.

I have also discovered that the OPS has failed to comply with the explicit mandates of Congress with regard to safety and environmental protection. For example, Congress has mandated that the OPS adopt regulations for unusually sensitive areas and adopt regulations regarding use of internal inspection devices. The deadlines for completing these actions passed years ago. The OPS has simply failed to accomplish these mandates. That is not to say that the OPS did not undertake these mandates, but it is curious to note that whenever agreement with the industry could not be achieved, the regulatory process effectively ground to a halt. Even as you hear this testimony today, and witness for yourselves our tragedy, the regulatory process has not produced the safety regulations required by Act of Congress.

As I stated earlier, the Bellingham incident is not unique. Other communities have experienced similar tragedies, and as a consequence, like Bellingham, and like the State of Washington, these communities have been awakened to the inadequacies of the federal regulatory environment. Other states have sought to improve the safety of their citizens through establishing comprehensive programs of pipeline safety within their states. The full effectiveness of these efforts, however, has never been realized, and the safety potential that could have resulted from these proactive actions by states has never been achieved because of the unwillingness of the federal government to release its stranglehold on regulatory authority over the pipeline industry even when that federal regulatory authority stands unused and unfulfilled. Consequently, states like Minnesota and California, which have established very thorough programs for pipeline safety, have never been able to achieve their full potential because of the unwillingness of the federal government to allow states to have a meaningful role in ensuring the safety of their own citizens and the desire of the OPS to maintain complete control over every aspect of the industry. This desire for complete control by the OPS is demonstrated by its determination to withdraw from the agency arrangements that it has in place with four states authorized in the past to inspect, but not regulate federal interstate pipelines within their boundaries.

The City of Bellingham, with many other cities and counties in the state, has been working for passage of state legislation authorizing much more extensive protection of our citizens related to pipeline safety. The question as to whether or not this effort will be successful is not, however, in the hands of the state legislature or the governor, but in the hands of the federal government. Unless Congress is willing to allow states to have a meaningful role in ensuring the protection of their citizens through an active program of regulation of interstate pipelines, this effort, like the efforts in California and Minnesota, simply will not accomplish needed safety and environmental protection.

The rules under which this industry operates simply must change. In order for that to occur, changes are required by the federal government. Since the federal government has shown its unwillingness to regulate effectively this industry and provide the protection that our citizens and environment need, deserve and demand, it is the responsibility of the federal government to allow states to protect their citizens. This is not to say that the federal government should abandon the regulation of pipelines. I would be the last to argue for such a step. Clearly, the federal government must establish a minimum level of safety that must be followed by any interstate pipeline operator. However, the federal government's legitimate concern about interference with interstate commerce need not prevent states from providing for the safety of their citizens. A partnership can be established between the federal government and states whereby states can protect their citizens without interfering with interstate commerce, particularly in cases where the states have expertise or where the federal government could have acted, but the federal regulatory agency has chosen not to act.

It is for this reason that I heartily support Senate Bill 2004 offered by Senator Murray and cosponsored by Senator Gorton. I believe that this bill, together with the similar effort in the

House of Representatives, as set forth in HB 3558, introduced by Representative Metcalf, will accomplish the changes necessary to ensure that not only do we have a strong, viable fuel distribution system in America, but we have a strong, viable fuel distribution in America that can and will be operated in such a fashion that it does not endanger our environment; does not kill our children; and allows our citizens living near pipelines to go to sleep at night without anxiety about their personal safety.

My testimony thus far consists of an overview of the results of my quite extensive examination of pipeline safety in America, the Federal OPS, and the attempts by certain states to improve the safety of their citizens. I would now like to discuss what pipeline safety means in real, practical, human terms.

Fundamentally, pipeline safety is not about legislation, and it is not about federal bureaucracies. Pipeline safety is about people and the environment. When a pipeline ruptures, it doesn't rupture in a committee hearing, and it doesn't rupture in an agency office; it ruptures in a neighborhood, or a park, or a wetland, or over a stream, or in a farmer's field.

The effects of the rupture are not abstract or theoretical, they are real. They are practical. In Bellingham's case, it meant attending the funerals of three wonderful boys in one week, along with a community of thousands of mourners. It meant the disruption of the water supply to one-quarter of the citizens of our community, and restrictions on water use, while alternate facilities were being developed to provide an adequate water supply. It meant the indefinite delay of salmon restoration projects on a salmon-bearing urban stream. It meant the devastation of one and one-half miles of wildlife habitat along a stream corridor in the midst of one of the older and best-established parks in our community. It meant children afraid that their neighborhoods may blow up. It meant anguish, questioning, grieving, and, in some cases, a totally unsatisfying search for rational answers to the question, why?

In Bellingham's case, it means great frustration on the part of local elected officials like myself. When asked by citizens, "what will you do to make sure that we are safe?" the answer, "I will do the best I can, but my hands are tied by federal law" does not satisfy. In addition to the mayors here today, I wish it were possible for there to be sitting at the table with me, Mayor George Spadaro of Edison, NJ, City Councilman Robert Mann of North Blenheim, NY, and Mayor Bill Greenup of Fredericksburg, VA. They are just a few of the mayors and other local elected officials we have reached out to who could tell you about the enormity of the disaster visited on their communities by pipeline accidents over the years. I believe they would echo my comments.

While the pipeline disaster in Bellingham was not unique, in a very important way, the Bellingham situation is unique. For reasons unknown, in 1995, the Olympic Pipe Line Company ("Olympic") allowed its franchise (its right to cross city property), to expire. As a consequence, the City of Bellingham was in a strong bargaining position to require that very explicit safety measures be taken by Olympic as a condition for permission to utilize our property. As a result of this quirk, we have been able to take steps that we believe will

ensure the protection of Bellingham's citizens. These steps included requiring: Hydrostatic testing of the pipeline; a thorough review of the computer monitoring system; a review of the placement, location, and operation of all valves; the provision of adequate leak detection systems; provision for thorough and adequate staffing and training; and a comprehensive analysis of the entire Olympic pipeline system to ensure that all aspects of the system, including its management and operating procedures, are sufficient to ensure that it will operate in a safe fashion. Remember, though, we were able to do this because of Olympic's failure to renew its franchise a few years before this tragic accident.

The question, however, is "why is it necessary for a community to rely on a glitch, a happenstance, a mistake by the pipeline company in the maintenance of its franchise, for us to have the ability to protect our citizens?" It shouldn't be.

With virtually no background or history in dealing with fuel pipeline operations, the City of Bellingham, in a period of approximately three months, was able to develop a comprehensive pipeline safety program that meets the needs of our community.

Why is it after receiving millions upon millions in federal funds, having an expert staff and decades to accomplish the same, the OPS has not been able to do so? Honorable members of the Committee, the reason that this has not occurred is because the will to do so has not been present.

We have, through our actions, provided for the safety of our citizens. We are confident that Olympic's pipeline, should it restart, will be safe because of the actions we have taken in our pipeline safety plan. What we have achieved in such a short time is something that the citizens of every community in this state and the citizens throughout this country, are entitled to receive. They will not receive this level of protection unless action is taken to change the status quo. The OPS has not adequately served the public interest. Congress needs to take steps to protect our citizens and our environment. The OPS must be made accountable. It must be required to fulfill its mandate. Senator Murray's legislation creates an environment which will result in an accountable agency and a responsive system of pipeline safety.

Steven Tsiorvas, Wade King, and Liam Wood did not deserve to die on June 10, 1999. May the memory of these wonderful boys and this needless sacrifice encourage you to take steps that will ensure that no other parents must sit before another Committee of the United States Senate at some time in the future and repeat the tales that you have heard today.